



BBNJ Agreement

Briefing note 1 (April 2025)

Signature, Ratification and Implementation of the BBNJ Agreement at the National Level

Introduction

On 19 June 2023 member states of the United Nations (UN) adopted, by consensus, the **Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction**.¹ This instrument is more commonly known as the BBNJ Agreement, with 'BBNJ' standing for 'biodiversity beyond national jurisdiction'.

The BBNJ Agreement is the third implementing agreement under the **1982 United Nations Convention on the Law of the Sea**.² It seeks to manage the deep-ocean environment, including its ecosystems and resources, in a sustainable way in order to prevent long-term decline and meet the needs of present and future generations.

Geographically, the BBNJ Agreement applies to the high seas (the water column beyond the 200-nautical-mile exclusive economic zone of

coastal states) and the international deep seabed area (that is, the seabed, ocean floor and subsoil beyond the continental shelves of coastal states).

Like its parent treaty, the BBNJ Agreement has been negotiated around a package deal of issues, namely:

1. **marine genetic resources (MGRs), including the fair and equitable sharing of benefits (Part II)**
2. **area-based management tools (ABMTs), including marine protected areas (MPAs) (Part III)**
3. **environmental impact assessments (EIAs) (Part IV)**
4. **capacity-building and the transfer of marine technology (Part V).**³

This is issue 1 of the Commonwealth Secretariat's BBNJ briefing note series – for further issues and the latest updates see thecommonwealth.org/bluecharter/BBNJ.

These briefings supplement the Secretariat's six-part BBNJ webinar series, which can be found at thecommonwealth.org/BBNJ-webinar.

The BBNJ Agreement is an international treaty and gives rise to legal rights and obligations. To become a party to the BBNJ Agreement, a state must consent to be bound by its terms.

The current status of the signatories and parties to the Agreement can be found on the UN BBNJ Agreement website.⁴

This briefing note explains how a state can express its consent to be bound by the BBNJ Agreement. It also explores measures that states may wish to consider when preparing for the future implementation of the instrument at a national level, such as the enactment of national legislation and the establishment and/or designation of a national focal point.

Signing the BBNJ Agreement

The BBNJ Agreement is open for signature by all states and regional economic integration organisations. By signing the BBNJ Agreement, a state is expressing its intention to comply with it. This expression of intent is not in itself legally binding, and the state does not take on any legal obligations under the instrument upon signature.

However, by signing the Agreement, a state agrees to be morally bound by its spirit. Signature is the first step towards acceptance, and it creates an obligation to refrain, in good faith, from committing any acts that would defeat the object and purpose of the Agreement.

International treaties usually remain open for signature for a limited period. The BBNJ Agreement is open for signature for two years, from 20 September 2023 until 20 September 2025.

Signature of the BBNJ Agreement is accomplished when the authorised representative of a state signs the instrument at UN Headquarters in New York. Traditionally, this authorised representative will be the head of state, head of government or minister for foreign affairs; however, another person may sign the Agreement if they are empowered by the state through the deposit of an instrument bestowing on them full powers. A model instrument of full powers can be found in **Annex 3 of the UN Treaty Handbook**.⁵

Becoming a party to the BBNJ Agreement

To become a party to the BBNJ Agreement, a state must demonstrate, through a concrete act, its willingness to undertake the legal rights and obligations contained within the instrument.

A state may express its consent to be bound by the BBNJ Agreement in several ways, the most common being ratification, acceptance or approval of the instrument.

As acts of acceptance or approval of a treaty both have the same legal effect as acts of ratification, a state may elect to use any of these methods to express its consent to be bound by the BBNJ Agreement in accordance with its national procedures.

Ratifying the BBNJ Agreement

A state that has signed the BBNJ Agreement can elect to ratify the instrument. There is no time limit within which a state is required to ratify after signature. Ratification is a voluntary undertaking by a state to be legally bound by the terms of the BBNJ Agreement, and it will usually involve a state taking steps at both the national and international levels.

At the national level, a state will need to ratify the BBNJ Agreement in accordance with its own domestic processes and procedures. Naturally, these processes and procedures will vary from state to state. For example, this could involve seeking approval of the BBNJ Agreement by a state's national legislature or executive, or both. The responsible government office or designated ministry of a state may also provide advice on how the state should implement the BBNJ Agreement domestically (via national implementing legislation, for example).

If a state decides to ratify the BBNJ Agreement, it is obliged to ensure that its domestic legislation complies with the treaty's provisions. It must therefore consider the legal, administrative and institutional mechanisms it will need to establish in order to comply with its obligations under the instrument.

Ratification of the BBNJ Agreement at the national level alone is not sufficient to establish a state's intention to be legally bound at the international level.

Ratification at the international level requires a state to deposit an instrument of ratification with the depository of the BBNJ Agreement, the Secretary-General of the UN in New York. To be valid, this instrument of ratification needs to be signed by the relevant head of state, head of government or the minister of foreign affairs of the state concerned. A model instrument of ratification, acceptance or approval of the BBNJ Agreement can be found in **Annex 4 of the UN Treaty Handbook**.⁶

Upon the deposit of a valid instrument of ratification, the state becomes legally bound by the terms of the BBNJ Agreement from the time the instrument enters into force.

Acceptance or approval

In the practice of some states, instruments of acceptance or approval are used instead of ratification. For example, at the national level, the constitutional law of a state may not require a treaty to be ratified by the relevant head of state. In those circumstances, the state may elect to accept or approve the treaty. Acceptance or approval of a treaty following signature has the same legal effect as ratification and expresses the consent of a state to be bound by the treaty. As for ratification, the state must deposit a valid instrument of acceptance or approval with the depository of the BBNJ Agreement, the Secretary-General of the UN in New York. Additional information regarding becoming a party to the BBNJ Agreement can be found on the **UN BBNJ Agreement website**.⁷

Acceding to the BBNJ Agreement

Once the BBNJ Agreement is closed for signature (that is, after 20 September 2025), states that have not signed the instrument can still become a party by way of accession.

Accession is a statement by a state that it is willing to be legally bound by the BBNJ Agreement. This statement has the same legal effect as ratification, acceptance or approval. The instrument of accession must be signed by the head of state, head of government or minister for foreign affairs of the state concerned.

While ratification, acceptance or approval requires two steps – signature of the BBNJ Agreement, and the deposit of a valid instrument of ratification,

acceptance or approval with the Secretary-General of the UN – accession is not preceded by signature and only requires one step: the deposit of a valid instrument of accession with the Secretary-General of the UN. A model instrument of accession can be found in **Annex 5 of the UN Treaty Handbook**.⁸

Reservations or exceptions

Upon ratifying, accepting, approving or acceding to the BBNJ Agreement, a state is not entitled to make a reservation or exception to its provisions, unless expressly permitted by the Agreement itself.

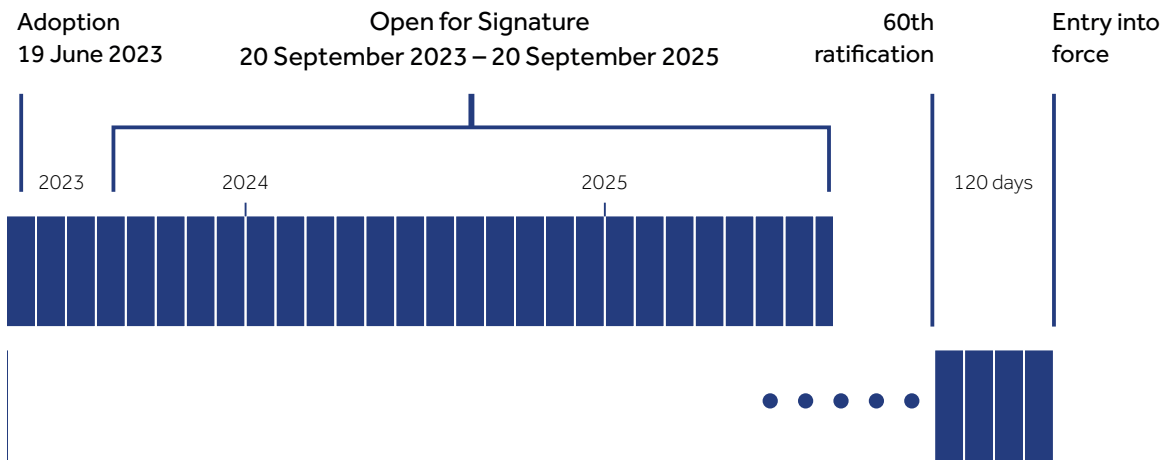
Pursuant to Article 10(1) of the BBNJ Agreement, a state party may exclude the application of the Agreement's provisions to the utilisation of marine genetic resources, and digital sequence information on marine genetic resources, of areas beyond national jurisdiction collected or generated before the entry into force of the instrument. In the event that a state party elects to make such an exception, it will need to deposit a written exception with the Secretary-General of the UN when signing, ratifying, approving, accepting or acceding to the BBNJ Agreement.

Declarations and statements

A state may elect to make a declaration or statement as to its understanding of a matter contained in the BBNJ Agreement or its interpretation of a particular provision when signing, ratifying, approving, accepting or acceding to the instrument. Unlike a reservation or exception, the purpose of a declaration or statement is to clarify a state's position on and interpretation of the BBNJ Agreement or one of its specific provisions, rather than to purport to exclude or modify the legal effect of its provisions in their application to the particular state concerned.

While a declaration or statement does not need to be signed by a formal authority, it is preferable for the head of state, head of government or minister for foreign affairs – or alternatively a person having full powers bestowed upon them by the relevant state – to sign the declaration or statement.

Figure 1: Timeline of the BBNJ Agreement



States may sign

States may ratify, accept or approve (if signed prior to 20 Sept 2025)

States may accede

Entry into force of the BBNJ Agreement

The BBNJ Agreement will enter into force 120 days after the date of deposit of the 60th instrument of ratification, approval, acceptance or accession.

Pending the entry into force of the BBNJ Agreement, a state that has signed, ratified, accepted or approved the BBNJ Agreement is obliged to refrain from acts that would defeat the object and purpose of the instrument.

National implementation

In preparing to become a party to the BBNJ Agreement, there are actions that states can take to prepare for its implementation at the national level.

States have discretion as to the nature and form of their implementation of multilateral agreements, and the actions set out below are recommendations only. For information that is most relevant to your particular state and its domestic laws, please consult with your state's treaty office and government lawyers and advisors.

The BBNJ Agreement obligates parties to take the necessary legislative, administrative or policy measures, as appropriate, to ensure its implementation. Prior to consenting to be bound by the BBNJ Agreement, states are therefore recommended to undertake the following actions.

- Consult with all departments, ministries and agencies that may have responsibilities to implement the BBNJ Agreement at the national level, such as those relating to oceans, fisheries, the environment, energy, marine scientific research, shipping and communications.
- Conduct a review of existing domestic law and policy to determine whether new legislation or administrative measures will be needed to implement obligations under the BBNJ Agreement.
- Obtain advice from government lawyers, perhaps in consultation with international lawyers, on how areas of domestic law and policy can be amended and/or augmented

to prepare for the implementation of the international legal obligations under the BBNJ Agreement.

- Prepare a plan for drafting new legislation necessary for implementing the BBNJ Agreement, including the documentation needed to introduce it to the state's legislature.
- Establish and/or designate a national focal point to serve as the main point of contact between the state party and the Secretariat established under the BBNJ Agreement.

Once the BBNJ Agreement enters into force, state parties are required to implement their obligations under the Agreement and to monitor and report their implementation to the relevant institutions under the instrument.

Endnotes

- 1 United Nations (2023) *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction*. United Nations (1982) *United Nations Convention on the Law of the Sea*. <https://www.un.org/bbnjagreement/sites/default/files/2024-08/Text%20of%20the%20Agreement%20in%20English.pdf>
- 2 United Nations (no date) *United Nations Convention on the Law of the Sea*. https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
- 3 The Commonwealth Secretariat held four webinars on Parts II–V of the BBNJ Agreement between October 2024 and January 2025, recordings of which are available online: Part II, marine genetic resources: <https://vimeo.com/1030767639>; Part III, on ABMTs: <https://vimeo.com/1030772726>; Part IV, on EIAs: <https://vimeo.com/1030776678>; Part V, on capacity-building and the transfer of marine technology: <https://vimeo.com/1035663340>.
- 4 United Nations (no date) 'Status of Treaties: CHAPTER XXI: LAW OF THE SEA: 10. Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction', webpage. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-10&chapter=21&clang=_en
- 5 Treaty Section of the Office of Legal Affairs, United Nations (2013) 'Annex 3 – Model Instrument of Full Powers', in *Treaty Handbook* (2013 revision). <https://treaties.un.org/doc/source/publications/thb/english.pdf>
- 6 Treaty Section of the Office of Legal Affairs, United Nations (2013) 'Annex 4 – Model Instrument of Ratification, Acceptance or Approval', in *Treaty Handbook* (2013 revision). <https://treaties.un.org/doc/source/publications/thb/english.pdf>
- 7 United Nations (no date) 'Becoming a Party', webpage. <https://www.un.org/bbnjagreement/en/bbnj-agreement/becoming-party>
- 8 Treaty Section of the Office of Legal Affairs, United Nations (2013) 'Annex 5 – Model Instrument of Accession', in *Treaty Handbook* (2013 revision). <https://treaties.un.org/doc/source/publications/thb/english.pdf>



The Commonwealth

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